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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA200-4204; FRL-9811-9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is updating the materials that are incorporated by reference (IBR) into the Pennsylvania State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Pennsylvania Department of Environmental Protection (PADEP) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, D.C., and the EPA Regional Office.

DATES: This action is effective [insert date of publication in the Federal Register].

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW, Room Number 3334, EPA West Building, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814-2108 or by e-mail at frankford.harold@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 Federal Register document. On February 25, 2005 (70 FR 9450), EPA published a document in the Federal Register beginning the new IBR procedure for Pennsylvania, including Philadelphia and Allegheny Counties. On January 3, 2007 (72 FR 200), March 25, 2009 (74 FR 13014), and July 5, 2011 (76 FR 38992), EPA published updates to the IBR material for Pennsylvania.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following regulations and sections for Pennsylvania and Allegheny County:

A. Added Regulations

1. Additions of the following regulations or sections in 25 PA Code, article III:
 - a. Chapter 123 (Standards for Contaminants, Particulate Matter Emissions), section 123.14 (Outdoor wood-fired boilers).
 - b. Chapter 126 (Standard for Motor Fuels), subchapter D (Motor Vehicle Emissions Control Program), section 126.451 (Responsibilities of the Department).
 - c. Chapter 127 (Construction, Modification, Reactivation, and Operation of Sources), subchapter B (Plan Approval Requirements), section 127.12d (Completeness determination).
 - d. Chapter 127, subchapter E (New Source Review), sections 127.201a, 127.203a, and 127.218.
 - e. Chapter 129 (Standards for Sources, Sources of VOCs), sections 129.52a, 129.52b, and 129.52c.
 - f. Chapter 129 (Standards for Sources, Control of Emissions from Glass Melting Furnaces), sections 129.301 through 129.310 inclusive.
 - g. Chapter 130 (Standards for Products), subchapter D (Adhesives, Sealants, Primers, and Solvents), sections 130.701 through 130.708 inclusive.
 - h. Chapter 145 (Interstate Pollution Transport Reduction), subchapter C (Emissions of NO_x from Cement Manufacturing), sections 145.144, 145.145, and 145.146.
2. Addition of Title 35 (Health and Safety) of the Pennsylvania Statute (Pa. Cons. Stat. Ann.), Chapter 23B (Diesel-Powered Motor Vehicle Idling Act), sections 4601 through 4610 inclusive.
3. Additions of the following regulations or sections in Allegheny County Article XXI:
 - a. Part B (Permits Generally), Section 2102.07 (Prevention of Significant Deterioration).

- b. Part E (Source Emission and Operating Standards), subpart 8 (Additional Miscellaneous VOC Sources), section 2105.88 (Consumer Products).
- c. Part E, subpart 10 (NO_x Sources), section 2105.101 (Control of NO_x Emissions from Glass Melting Furnaces).

B. Revised Regulations

- 1. Revisions to the following regulations or sections in 25 PA Code, Article III:
 - a. Chapter 121 (General Provisions), section 121.1 (Definitions).
 - b. Chapter 126, subchapter D, sections 126.401, 126.411, 126.412, 126.413, 126.421 through 126.425 inclusive, 126.431, 126.432, and 126.441.
 - c. Chapter 127, subchapter B, sections 127.12b, 127.13, 127.44, 127.45, and 127.48.
 - d. Chapter 127, subchapter E, sections 127.201 through 127.215 inclusive and 127.217.
 - e. Chapter 129, Sources of VOCs, sections 129.51, 129.52, and 129.66.
 - f. Chapter 145, subchapter C, sections 145.142 and 145.143.
- 2. Revision to Allegheny County Article XXI, part B, section 2102.06 (Major Sources Locating In or Impacting a Nonattainment Area).

C. Removed Regulations

In 25 PA Code Article III, section 126.402 (NLEV scope and applicability) of chapter 126, subchapter D has been removed.

II. EPA Action

In this action, EPA is announcing the update to the IBR material as of April 1, 2013. EPA is also correcting typographical errors and omissions found in the table for paragraph 52.2020(c)(2),

specifically adding a title entry for Part E, subpart 8 (Additional Miscellaneous VOC Sources) and removing the word “Section” in the “Article XX or XXI citation” column for entries 2105.88 and 2105.101. In the table for paragraph 52.2020(d)(1), EPA is revising the title heading in the second column from “Permit No.” to “Permit Number.” EPA has determined that the actual entries found in the table of paragraph 52.2020(d)(1) are correct in the Code of Federal Regulations (CFR) and need no additional editing at this time. EPA has further determined that the entries found in the tables of paragraphs 52.2020(c)(1), (c)(3), (d)(2) through (d)(4), (e)(1), and (e)(2) are correct in the CFR and need no additional editing at this time.

EPA has determined that today’s rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today’s rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that

complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Pennsylvania SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court

of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” update action for Pennsylvania.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 25, 2013

W. C. Early, Acting
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN Pennsylvania

2. Section 52.2020 is amended by:

a. Revising paragraph (b).

b. In paragraph (c)(2), adding a title entry for Subpart 8 – Additional Miscellaneous VOC Sources after the existing entry for 2105.79, and revising the entries for Sections 2105.88 and 2105.101.

c. In paragraph (d)(1), revising the table heading.

The amendments read as follows:

§ 52.2020 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section with an EPA approval date of April 1, 2013 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the Federal Register. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after April 1, 2013 will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region III certifies that the following rules and regulations provided by EPA at the

addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of April 1, 2013:

(A) Materials in Notebook “40 CFR 52.2020(c)(1) – 1. PA Department of Environmental Protection (PA DEP); 2. PA Department of Transportation (PA DOT).”

(B) Materials in Notebook “1. 40 CFR 52.2020(c)(2) – Allegheny County Health Department (ACHD); 2. 40 CFR 52.2020(c)(3) – Philadelphia Air Management Services (AMS).”

(ii) EPA Region III certifies that the following source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State source-specific requirements which have been approved as part of the State implementation plan as of November 1, 2006. No additional revisions were made between November 1, 2006 and April 1, 2013:

(A) [Reserved.]

(B) Materials in Notebook “40 CFR 52.2020(d)(1) – Source-specific Requirements-Volume 1, Part 1.”

(C) Materials in Notebook “40 CFR 52.2020(d)(1) – Source-specific Requirements-Volume 1, Part 2.”

(D) Materials in Notebook “40 CFR 52.2020(d)(1) – Source-specific Requirements-Volume 2, Part 1.”

(E) Materials in Notebook “40 CFR 52.2020(d)(1) – Source-specific Requirements-Volume 2, Part 2.”

(F) Materials in Notebook “40 CFR 52.2020(d)(1) – Source-specific Requirements-Volume 3.”

(G) Materials in Notebook “40 CFR 52.2020(d)(1) – Source-specific Requirements-Volume 4.”

(H) Materials in Notebook “40 CFR 52.2020(d)(1) – Source-specific Requirements-Volume 5.”

(I) Materials in Notebook “40 CFR 52.2020(d)(2)-(d)(4) – Source-specific Requirements.”

(iii) EPA Region III certifies that the materials in Notebook “40 CFR 52.2020(d)(1) – Source-specific Requirements - Volume 6” provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State source-specific requirements which have been approved as part of the State implementation plan as of November 1, 2008. No additional revisions were made between November 1, 2008 and April 1, 2013.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814-2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue NW, Washington, DC 20460. For further information, call (202) 566-1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) EPA-approved regulations.

EPA-Approved Regulations and Statutes

(c)(1)***

(2) EPA-Approved Allegheny County Health Department (ACHD) Regulations

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ §52.2063 citation

Part E—Source Emission and Operating Standards				

Subpart 8 – Additional Miscellaneous VOC Sources				
2105.88	Consumer Products	4/3/12	11/29/12 77 FR 71115	

Subpart 10 – NOx Sources				
2105.101	Control of NOx Emissions from Glass Melting Furnaces	4/3/12	11/29/12 77 FR 71117	

(3)***

(d) EPA-Approved State Source-Specific Requirements

(1) EPA- APPROVED SOURCE- SPECIFIC REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) REQUIREMENTS FOR VOLATILE ORGANIC COMPOUNDS (VOC) AND OXIDES OF NITROGEN (NO_x)

Name of source	Permit number	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
For exceptions, see the applicable paragraphs in 40 CFR § 52.2063(c)					

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